

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
Johnson

Serial No.: **10/820,578**

Filed: **April 8, 2004**

For: **Delivery Vehicle With Automatic Door
Unlocking System**

Attorney's Docket No: **5115-001**

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) Examiner: Christopher J. Boswell
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October 8, 2007

Date

Kathy L. McDermott
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Dear Sir or Madam:

In response to the Notice of Non-Compliant Appeal Brief dated September 6, 2007, please find attached the appeal brief with a concise explanation of the subject matter defined in each independent claim referring to the specification by page and line number, and to the drawings, if any. Although no fees should be required for this response, if any are, please charge them to Coats & Bennett Deposit Account No. 18-1167.

This is the second appeal brief filed in this case. On November 9, 2005 Applicant filed a Notice of Appeal and submitted payment of \$250. On January 9, 2006 an appeal brief was filed and was accompanied by a \$250 payment. Subsequently, the Patent Office withdrew the final

rejection and issued a new non-final office action. Applicant responded to that non-final office action. A final rejection was mailed on November 15, 2006. This appeal brief is in response to the last final office action. Hence, there should be no fees required for filing this appeal brief. However, a time extension for three months is required and an Electronic Funds Transfer in the amount of \$510 is being authorized with this filing. If any other fees are required, please charge them to Coats & Bennett Deposit Account No. 18-1167.

APPEAL BRIEF

(I.) REAL PARTY IN INTEREST

The real party in interest is Lott Johnson.

(II.) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

(III.) STATUS OF CLAIMS

Claims 1-15 and 18-21 are pending. All claims, including 1-15 and 18-21 stand rejected. Applicant appeals the rejection of all claims, that is claims 1-15 and 18-21. Claims 16 and 17 have been canceled.

(IV.) STATUS OF AMENDMENTS

All amendments have been entered.

(V.) SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a vacuum actuated automatic door latch assembly 22 that unlocks the door 18 of a delivery vehicle 10. Spec. p. 3, ll. 21-25 and p. 4, ll. 1-4; Fig. 1. A latch 21 is operatively associated with a door 18 and is movable between locked and unlocked positions.

Spec. p. 4, ll. 5-12; Figs. 2-3. A pneumatic actuator 30 is operatively associated with the latch 21 for causing the latch to move between the locked and unlocked positions. Spec. p. 5, ll. 2-5; Figs. 2-3. A vacuum line 40 is connected to the pneumatic actuator 30 and adapted to connect to a vacuum source associated with the vehicle. Spec. p. 5, ll. 22-25; Fig. 3. A control valve 42 is disposed between the vacuum source and the pneumatic actuator 30 for controlling the actuation of the pneumatic actuator. Spec. p. 5, ll. 25-26; Figs. 2-3. A biasing device 50 engages the door 18 and biases the door towards an open position. Spec. p. 6, ll. 7-9; Figs. 2-3.

Claim 10 is directed to a delivery vehicle 10 having a vacuum actuated latch assembly 22 for latching an access door 18 to a load compartment 14. Spec. p. 3, ll. 15-23; Fig. 1. The delivery vehicle includes an engine for powering the vehicle and a compartment 14 for receiving and holding a load. Spec. p. 3, ll. 14-17; Fig. 1. A sliding door 18 permits access to the load compartment 14. Spec. p. 4, ll. 3-4; Figs. 1 and 2. A vacuum actuated latch assembly 22 is provided for automatically unlocking the sliding door 18. Spec. p. 2-3, ll. 20-25. A latch 21 is associated with the sliding door 18 for locking the door and is movable between a locked and an unlocked position. Spec. p. 4, ll. 6-12. A pneumatic actuator 30 is operatively associated with the latch and a vacuum line 40 is connected to the pneumatic actuator and extends from the engine of the vehicle. Spec. p. 5, ll. 2-25; Figs. 2-3. A control valve 42 is disposed between the engine and the pneumatic actuator 30 for controlling the actuation of the pneumatic actuator. Spec. p. 5, ll. 25-26 and p. 6, ll. 1-2; Figs. 2-3. A biasing device 50 engages the sliding door 18 and biases the sliding door towards an open position. Spec. p. 6, ll. 8-12; Fig. 2. The biasing device includes a spring 54 disposed adjacent the sliding door 18. Spec. p. 6, ll. 15-16. When the sliding door 18 assumes a closed position the spring engages the sliding door 18 and is compressed by the spring 54. Spec. p. 6, ll. 21-24; Fig. 2. When the latch is moved from the locked position to the unlocked position the spring 54 forces the sliding door 18 open. Spec. p. 7, ll. 10-15; Fig. 3.

Claim 15 is directed to a method of unlocking a door 18 to a load compartment 14 of a delivery vehicle 10. Spec. p. 7, ll. 6-15. The method entails directing a vacuum from an engine of the vehicle through a line 40 to a pneumatic actuator 30 that is operatively associated with a latch 21 that operates to lock the sliding access door 18, and which is slidable between a locked position and an unlocked position. Spec. p. 7, ll. 9-19. The method includes utilizing the vacuum to actuate the pneumatic actuator 30 resulting in the actuator engaging the latch 21 and moving the latch from the locked position to the unlocked position. Spec. p. 7, ll. 9-19; Figs. 2-3. The method further entails biasing the sliding access door 18 towards an open position while the latch 21 assumes the locked position and locks the sliding access door 18 closed. Spec. p. 7, ll. 14-19; Fig. 2. Biasing the sliding access door 18 towards the open position includes securing a spring 54 adjacent the sliding access door 18 and extending the spring to where the spring engages a stop 64 that extends from the sliding access door 18. Spec. p. 7, ll. 7-19; Fig. 2. Spring 54 pushes on the stop 64 and effectively biases the sliding door 18 towards the open position. Spec. p. 7, ll. 7-19; Fig. 3. Also, the biasing of the sliding access door 18 towards the open position is independent of the latch 21. Spec. p. 7, ll. 6-19; Figs. 2-3.

(VI.) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-15 and 18-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,016,968 to Lenz et al. (Lenz), in view of U.S. Patent No. 4,170,374 to Garcia (Garcia).

(VII.) ARGUMENT

A. Claims 1-15 and 18-21 are Not Obvious Under 35 U.S.C. §103(a) as Being Unpatentable Over Lenz and Garcia

1. The Examiner has not made out a prima facie case of obviousness

The Examiner acknowledges that Lenz does not disclose biasing the truck lid open. To meet this feature of Applicant's claims, the Examiner relies on Garcia. As for the motivation for combining Garcia, the Examiner states:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a biasing device near the latch of Lenz et al., as taught be Garcia, in order to bias the door to an open position, such that it decreases the amount of work needed to open the door. (emphasis added)

Final Office Action, p. 3.

This motivation is unsupported. The motivation for making the combination is not found in either Garcia or Lenz. Applicant appreciates that the motivation does not have to be explicitly taught in the references cited. However, there is no implicit support for this motivation. There is no documentary evidence that opening a conventional truck lid is difficult or is even a problem. Indeed, the Examiner does not even take the position that there is any significant amount of work involved in opening a truck lid of the type disclosed in Lenz. A close look at the articulated motivation shows that the Examiner bases the motivation on a need to "decrease the amount of work needed to open the door." That, of course, presumes that there is at least a significant amount of work involved in opening a truck lid. That is not the case and there is no evidentiary support for this proposition. In the end, the proffered motivation here is not based on any real evidence, but is an unsupported factual assertion that attempts to carry the burden of proving a prima facie case of obviousness. It does not. A prima facie case of obviousness is not made out.

2. The Examiner has misconstrued the claim term “sliding door,” and claims 5, 10 and 15 and other claims depending therefrom are not obviousness

Claim 5, which introduces the sliding door feature, is as follows:

The door latching assembly of claim 1 further including a delivery vehicle having a load compartment and a sliding door that permits access to the load compartment and wherein the latching assembly is mounted adjacent the sliding door and wherein the vehicle includes an engine that serves as the vacuum source for actuating the pneumatic actuator.

The Examiner argues that the truck lid of Lenz is a sliding door because it is “rotatively slidable about the rotational axis.” Final Office Action, p. 8. Hence, the Examiner concludes that a sliding door can include any door that rotates about an axis. That would, of course, mean that a conventional residential hinged door is a sliding door. It would also mean that a conventional hinged cabinet door is a sliding door. That construction of sliding door is unreasonable, fails to comport with the plain and ordinary meaning of the term, is inconsistent with the specification, and not in harmony with how a person of ordinary skill in the art would construe the term in light of the specification. The Examiner’s construction fails on all accounts.

It should be noted at the outset that the record does not really indicate the Examiner’s construction given to the sliding door term. The Examiner has not engaged in any real claim construction analysis. All that is reflected by record is that whatever construction the Examiner has in mind for the term “sliding door,” that a pivoting trunk lid or any hinged or rotating door for that matter is encompassed by the construction. The record does not reflect what the Examiner considers to be the plain and ordinary meaning of the term “sliding door.” Nor does the record reflect how the Examiner viewed the term “sliding door” in the context of how a person of ordinary skill in the art would view that term in light of the specification.

The law of claim construction in ex parte patent prosecution requires that the Examiner give a claim term its plain and ordinary meaning unless it is inconsistent with the specification. MPEP §2111. It is not difficult to ascertain the plain and ordinary meaning of the term “sliding

door.” Sliding doors are ever present and are seen everyday. They include sliding glass patio doors found in homes. They include sliding pocket doors found in homes. They include sliding glass shower doors found around bathtubs. The plain and ordinary meaning of “sliding door” is a door that slides horizontally back and forth between open and closed positions. The term “sliding door” does not encompass a pivoting or swinging door. No reasonable construction of “sliding door” can be so broad that it encompasses pivoting truck lids or hinged doors.

This construction - a door that slides horizontally back and forth between open and closed positions - is consistent with the specification. Applicant’s claims are directed to a delivery vehicle of the type shown in Figure 1. Such vehicles include a sliding door that slides back and forth between open and closed positions. Applicant’s sliding door is shown in Figure 2 of the specification and the sliding door is denoted by the reference numeral 18. In the specification at p. 3, line 20, the sliding door 18 is introduced in the specification.

The Examiner’s construction of sliding door is, respectfully, wrong. It is not a reasonable construction and it is not based on the plain and ordinary meaning of the term and it is not based in any way on the specification and how a person of ordinary skill in the art would construe the sliding door term. For that reason, the Board should reverse the Examiner with respect to all claims that include the “sliding door” term including claims 5, 10 and 15 and the claims depending therefrom.

3. Claim 21 is not obvious in view of Lenz and Garcia

Claim 21 is as follows:

The delivery vehicle of claim 10 wherein the spring is at least partially housed within an elongated sleeve that is fixed adjacent the sliding door; and wherein the spring is secured to a threaded bolt that is held with a threaded support such that the threaded bolt can move back and forth axially within the threaded support so as to adjust the position of the spring with respect to the sliding door.

The Examiner has misconstrued the terms in this claim and has failed to point out where other terms are found in the combination of Lenz and Garcia even if properly combined.

First, the Examiner has improperly construed "elongated sleeve." Whatever the construction, the Examiner maintains that the rubber boot 50 in Garcia is an elongated sleeve. See Figure 2 of Garcia reproduced below.

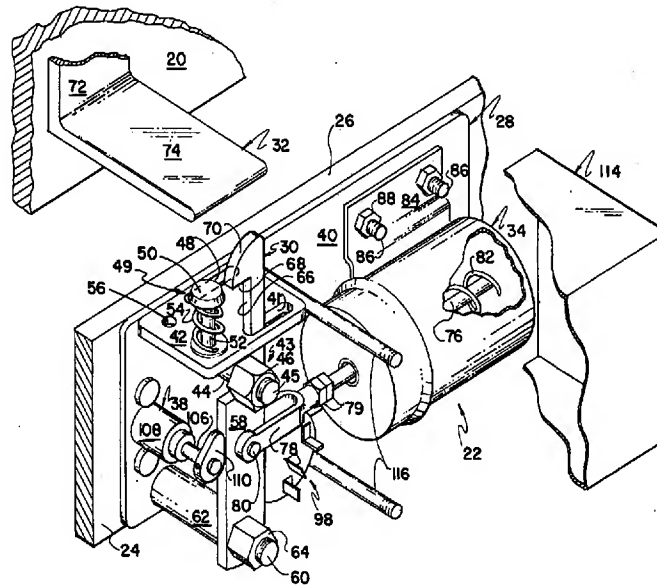


FIG. 2

The plain and ordinary meaning of "elongated sleeve" is a hollow structure, having a length dimension greater than its width dimension, open at opposite ends such as a sleeve of a shirt or a pipe sleeve. This is consistent with Applicant's specification. See the sleeve 52 in Figure 2 of Applicant's application. Boot 50 of Garcia is not an elongated sleeve. It is certainly not elongated. It is at least closed on the top end. The drawings of Garcia do not show the opposite ends of the structure. Nor does the specification describe the opposite end.

In addition, claim 21 calls for the spring to be secured to a threaded bolt and that the threaded bolt is supported in a threaded support such that the threaded bolt can move back and forth axially so as to adjust the position of the spring with respect to the sliding door. The

Examiner acknowledges that neither Lenz nor Garcia show the threaded bolt feature that carries the biasing spring. However, the Examiner takes the position that it would have been obvious to one having ordinary skill in the art at the time the invention was made to adapt the use of the shank, in Garcia, to be threaded such that the threaded shank can move back and forth axially within a threaded support so as to adjust the position of the spring with respect to the door. Final Office Action, p. 5. This is a conclusionary statement by the Examiner. No reason or motivation is stated. The Examiner simply concludes that securing the spring to a threaded shaft or bolt, that is in turn supported in a threaded support and axially movable back and forth therein, is obvious. That conclusion is based on hindsight. There is no basis for concluding obviousness with respect to this particular structural feature of Applicant's invention.

Conclusion

The Board is respectfully urged to reverse the Examiner with respect to all rejections and to find that claims 1-15 and 18-21 are patentable.

(VIII.) CLAIMS APPENDIX

1. A vacuum actuated automatic door latching assembly for unlocking a door of a delivery vehicle, comprising:
 - a. a latch operatively associated with the door for latching the door, the latch movable between the lock and unlocked positions;
 - b. a pneumatic actuator operatively associated with the latch for causing the latch to move between the locked and unlocked positions;
 - c. a vacuum line connected to the pneumatic actuator and adapted to connect to a vacuum source associated with the vehicle;
 - d. a control valve disposed between the vacuum source and the pneumatic actuator for controlling the activation of the pneumatic actuator; and
 - e. a biasing device engaging the door and biasing the door towards an open position.
2. The door latching assembly of claim 1 wherein the latch includes a locking lever that is pivotally mounted and movable between a locked and unlocked position, wherein the pneumatic actuator includes an arm that engages the locking member and moves the locking member in at least one direction between the locked and unlocked positions.
3. The door latch assembly of claim 1 where the latch assembly includes a conventional key lock but wherein the pneumatic actuator is operative to actuate the latch independent of the key lock.
4. The latching assembly of claim 2 wherein the locking lever is of a generally L-shape and includes a terminal end portion that includes a catch for engaging a receiver secured to the door to be latched.

5. The door latching assembly of claim 1 further including a delivery vehicle having a load compartment and a sliding door that permits access to the load compartment and wherein the latching assembly is mounted adjacent the sliding door and wherein the vehicle includes an engine that serves as the vacuum source for actuating the pneumatic actuator.

6. The latching assembly of claim 1 wherein the biasing device includes a spring.

7. The latching assembly of claim 6 wherein the spring is adapted to extend between a stop disposed on the door and an area adjacent the door, and wherein the position of the spring is adjustable with respect to the door.

8. The latching assembly of claim 7 wherein the spring is at least partially contained within a sleeve.

9. The latching assembly of claim 8 wherein the spring is fixed to a threaded bolt that extends at least partially through the sleeve and which can be adjusted with respect to the door.

10. A delivery vehicle having a vacuum actuated latch assembly for latching an access door to a load compartment, comprising:

- a. an engine for powering the vehicle;
- b. a compartment for receiving and holding a load;
- c. a sliding door for permitting access to the compartment of the vehicle;
- d. a vacuum actuated latch assembly for automatically unlocking the door,
the vacuum actuated latch assembly comprising:
 - i. a latch operatively associated with a door for locking the door;
 - ii. the latch being movable between a locked and an unlocked position;
 - iii. a pneumatic actuator operatively associated with said latch for causing the same to move between the locked and unlocked position;

- iv. a vacuum line connected to the pneumatic actuator and extending to the engine of the vehicle such that the engine of the vehicle serves as a vacuum source for the pneumatic actuator;
- v. a control valve disposed between the engine and the pneumatic actuator for controlling the actuation of the pneumatic actuator;
- vi. a biasing device for engaging the sliding door and biasing the sliding door towards an open position, the biasing device being spaced from the latch assembly and operable independently of the latch assembly, and wherein the biasing device includes a spring disposed adjacent the sliding door and positioned with respect to the sliding door such that when the sliding door assumes a closed position the spring engages the sliding door and is compressed by the sliding door, and wherein when the latch is moved from the locked position to the unlocked position the spring forces the sliding door to open.

11. The delivery vehicle of claim 10 wherein the pneumatic actuator includes a pneumatic cylinder.

12. The delivery vehicle of claim 11 wherein the latch includes a locking lever for engaging a receiver secured to the door, and wherein the pneumatic actuator includes an arm for engaging and moving the locking lever from a locked position to an unlocked position.

13. The delivery vehicle of claim 11 wherein the pneumatic actuator can only be actuated to unlatch the latch when the engine of the vehicle is running.

14. The delivery vehicle of claim 13 wherein the latch normally assumes a locked position, and wherein the arm that extends from the pneumatic actuator is operative upon the actuation of the pneumatic actuator to engage the latch and move the latch to the unlocked position.

15. A method of unlocking a sliding access door to a load compartment of a delivery vehicle comprising: directing a vacuum from an engine of the vehicle through a line to a pneumatic actuator that is operatively associated with a latch that operates to lock the sliding access door and which is movable between a locked position and an unlocked position; utilizing the vacuum to actuate the pneumatic actuator and wherein the actuation of the pneumatic actuator results in the actuator engaging the latch and moving the latch from the locked position to the unlocked position, permitting the sliding access door to open; shutting the engine off; and closing the sliding access door causing the latch to lock the sliding access door; biasing the sliding access door towards an open position while the latch assumes the locked position and locks the sliding access door closed; wherein biasing the sliding access door towards an open position includes securing a spring adjacent to the sliding access door and extending the spring to where the spring engages a stop that extends from the sliding access door such that the spring pushes on the stop and effectively biases the sliding access door towards an open position; and wherein the biasing of the sliding access door towards the open position is independent of the latch that operates to lock the sliding access door and wherein when the latch is moved from the locked position to the unlocked position, the spring causes the sliding access door to move towards the open position.

18. The method of claim 15 including actuating a control valve that is effective to permit the vacuum to reach the pneumatic actuator and wherein when the vacuum reaches the pneumatic actuator, the pneumatic actuator is actuated which results in the latch being engaged and moved to the unlocked position.

19. The method of claim 15 wherein the pneumatic actuator includes an arm that extends past a portion of a locking lever that forms a part of the latch assembly; wherein the actuation of the pneumatic actuator causes the arm to move and to engage a portion of the locking lever which results in the locking lever being pulled from its locked position to an unlocked position.

20. The method of claim 19 wherein the locking lever is pivotally mounted for movement about an axis and wherein the actuation of the pneumatic actuator causes the locking lever to rotate from a locked position to an unlocked position.

21. The delivery vehicle of claim 10 wherein the spring is at least partially housed within an elongated sleeve that is fixed adjacent the sliding door; and wherein the spring is secured to a threaded bolt that is held with a threaded support such that the threaded bolt can move back and forth axially within the threaded support so as to adjust the position of the spring with respect to the sliding door.

(IX.) EVIDENCE APPENDIX

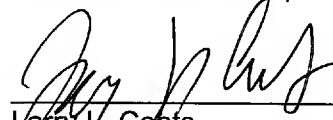
None.

(X.) RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

A handwritten signature in black ink, appearing to read "Larry L. Coats", is written over a horizontal line.

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